

**FAX**

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DATE: 4/9/01PAGES: 6
(No. of pages including this cover sheet)TO: Lynne Christenbury
(ATTORNEY, AGENT, FIRM OR AGENCY)09/049,304
(ATTORNEY'S DOCKET NUMBER OR APPLICATION NUMBER)302-892-1026
(FAX/TELECOPIER NUMBER)FROM: Elizabeth M. Elwain, EXAMINER,
ART UNIT ~~1844~~ 1638GROUP 1800 FAX NUMBERS:

ART UNIT 1801 (703) 305-3014	ART UNIT 1808 (703) 308-0294
ART UNIT 1802 (703) 308-4065	ART UNIT 1809 (703) 305-3014
ART UNIT 1803 (703) 308-4227	ART UNIT 1811 (703) 305-7362
ART UNIT 1804 (703) 308-4312	ART UNIT 1812 (703) 308-0294
ART UNIT 1805 (703) 308-4312	ART UNIT 1814 (703) 305-7401
ART UNIT 1806 (703) 305-7362	ART UNIT 1815 (703) 308-4065
ART UNIT 1807 (703) 305-7939	<u>703-305-7401</u>

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FROM: Elizabeth McElwain, EXAMINER,
 ART UNIT ~~38~~ 1644 1638

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**UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office**Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/049,304	03/27/98	FALCO	BB-1037-F

HM12/0829

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WILMINGTON DE 19898

EXAMINER

MCELWAIN, E

ART UNIT	PAPER NUMBER
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1638

DATE MAILED: 08/29/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action SummaryApplication No.
09/049,304

Applicant(s)

Falc

Examiner

Elizabeth McElwain

Group Art Unit
1638☒ Responsive to communication(s) filed on May 4, 2000☐ This action is FINAL.☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 35 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 1 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claim

☒ Claim(s) 1-20 is/are pending in the application.
Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☐ Claim(s) _____ is/are rejected.

☐ Claim(s) _____ is/are objected to.

☒ Claims 1-20 are subject to restriction or election requirement.

Application Papers☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.☐ The drawing(s) filed on _____ is/are objected to by the Examiner.☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.☐ The specification is objected to by the Examiner.☐ The oath or declaration is objected to by the Examiner.**Priority under 35 U.S.C. § 119**☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some ☒ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).**Attachment(s)**☐ Notice of References Cited, PTO-892☐ Information Disclosure Statement(s), PTO-1449, Paper No(s) _____☐ Interview Summary, PTO-413☐ Notice of Draftsperson's Patent Drawing Review, PTO-948☐ Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

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Art Unit 1638

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The Group and/or Art Unit location of your application in the PTO has changed. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Group Art Unit 1638.

Applicant's election of Group I, claims 1-15 in Paper No. 7 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claims 16-20 are withdrawn from consideration as drawn to a non-elected invention.

After further review of the claims, it has been determined that more than one invention is encompassed by claims 1-15, and therefore the following restriction requirement is set forth.

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-7, 9 and 11-15 drawn to DNA encoding lysine ketoglutarate reductase (LKR), plant cells and plants transformed with said gene and a method of reducing LKR activity in plant seeds, classified in class 800, subclass 278, for example.
- II. Claims 8 and 10 drawn to a mutant plant cell or seed, classified in class 435, subclass 440, for example.

The inventions are distinct, each from the other because:

The inventions of Groups I-II are drawn to distinct products. The invention of group I is drawn to an LKR gene and plants transformed therewith, while the invention of group II is drawn to a plant cell and seed altered by mutation of the LKR gene. Thus the inventions of

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groups I and II are chemically, functionally and structurally distinct products, which can be made by different methods, using different method step and one is not required by the other. Each are capable of being separately made, independently used and the patentability of one would not render the other obvious or unpatentable.

5 Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, their recognized divergent subject matter, and the requirement for different areas of search, restriction for examination purposes as indicated is proper.

10 Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

15 Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

20 Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth F. McElwain whose telephone number is (703) 308-1794. The examiner can normally be reached on Tuesday through Friday from 7:30 AM to 5:00 PM. The examiner can also be reached on alternate Mondays.

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5 If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paula Hutzell, can be reached at (703) 308-4310. The fax phone number for this Group is (703) 308-4242. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989).

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0196.

10 August 28, 1999

ELIZABETH F. McELWAIN
PRIMARY EXAMINER
GROUP 1800/600

Elizabeth F. McElwain